



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,736	10/31/2003	Jerry Z. Shan	82099127	3123
22879 7590 02/27/2012 HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528				
EXAMINER				
KUNDU, SUJOY K				
ART UNIT		PAPER NUMBER		
2857				
NOTIFICATION DATE		DELIVERY MODE		
02/27/2012		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM
ipa.mail@hp.com
brandon.serwan@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JERRY Z. SHAN, EVAN R. KIRSHENBAUM,
HENRI J. SUERMONDT,
DIRK BEYER, and CHAO CHEN

Appeal 2010-001456¹
Application 10/698,736
Technology Center 2800

Before JEAN R. HOMERE, CAROLYN D. THOMAS, and
ANDREW J. DILLON, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Hewlett Packard Development Company, LP.
(App. Br. 2.)

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-30. (App. Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' Invention

Appellants invented a method and system for monitoring a data stream obtained from a system to detect an abnormal condition therewith. (Spec. 2, ¶ [0002].) In particular, upon receiving the data stream (12) from the data producing system (14), a processor (32) samples a first portion of the data stream to generate a plurality of sequences, which are subsequently fed into a trainer (20) to train a detector (22) within the processor (32) to thereby determine when at least a value in the generated sequences crosses a predetermined threshold. (Fig. 1, Spec. ¶¶ [0004, 0020-0022].)

Illustrative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1. A processor-based method comprising:

receiving a data stream comprising a plurality of temporally ordered data points;

generating a plurality of sequences from a first portion of the data stream; and

training a detector by determining a value for a sensitivity parameter using the plurality of sequences.

Prior Art Relied Upon

Cox	US 5,734,592	Mar. 31, 1998
Boerner	US Patent App. Pub. No.: 2003/0009399 A1	Jan. 9, 2003

Rejections² on Appeal

The Examiner rejects the claims on appeal as follows:

1. Claims 1-14 are rejected under 35 U.S.C. § 101 (a) as being directed to non-statutory subject matter.
2. Claims 1-12, 14-23, and 25-30 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Boerner.
3. Claims 13 and 24 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over the combination of Boerner and Cox.

II. ANALYSIS

Non-Statutory Rejection

Independent claim 1 recites, *inter alia*, a processor-based method wherein a received data stream is used to generate a plurality of sequences, which are in turn used to train a detector to determine a value for a sensitivity parameter. The Examiner concludes that the claim is directed to non-statutory subject matter because the method recited therein does not

² The Examiner withdrew the 112 second paragraph rejection previously entered against claim 1 as being indefinite. (Ans.8.) Therefore, this rejection is no longer before us for review.

involve a physical transformation nor is it tied to a particular machine.³ (Ans. 8-10.) In response, Appellants argue that the method of claim 1 is patent-eligible under the cited test because it is tied to a particular processor having a detector integrated therein. Further, Appellants argue that the recited method also involves the physical transformation of an article from a

³ “[The Supreme] Court’s precedents establish that the machine-or-transformation test is a useful and important clue, an investigative tool, for determining whether some claimed inventions are processes under § 101. The machine-or-transformation test is not the sole test for deciding whether an invention is a patent-eligible ‘process.’” *See Bilski v. Kappos*, 130 S.Ct. 3218, 3227 (2010).

The Court of Appeals for the Federal Circuit (“CAFC”) stated the machine-or-transformation test for process claims. *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc). The CAFC explained the machine-or-transformation test as follows:

The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. *See [Gottschalk v.] Benson*, 409 U.S. [63], 70 [(CCPA 1972)]. Certain considerations are applicable to analysis under either branch. First, as illustrated by *Benson* and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim’s scope to impart patent-eligibility. [*Id.* at 71-72.] Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. *See [Parker v.] Flook*, 437 U.S. [584], 590 [(1978)].
Id. at 961-62 (parallel citations omitted).
Id. at 3230 (parallel citations omitted).

different state or thing because the detector recited therein is transformed to a different state upon being trained. (App. Br. 7-9, Reply Br. 1-3.)

We agree with Appellants that the processor that is used to implement the method of claim 1 is not a general purpose computer. Rather, it is a particular processor (32) that utilizes a trainer (20), a detector (22), an alarm (28) contained therein to implement the recited method. (Fig. 1.) For at least these reasons, we conclude that the method of claim 1 and the claims depending therefrom are patent-eligible under the machine or transformation test.

Anticipation Rejection

Appellants argue that Boerner does not describe using a plurality of sequences generated from a first portion of a data stream to determine the value for a sensitivity parameter. (App. Br. 10-13, Reply Br. 3-4.) In response, the Examiner finds that Boerner's disclosure of analyzing a plurality of time series data sets to identify a plurality of data sets describes using a data stream to generate a plurality of sequences. (Ans. 12.) The Examiner also finds that Boerner's disclosure of using the data sets from a selected amount of data points to create multiple trends indicates that the sequences would have to be analyzed to create the threshold. (*Id.* at 14-15.)

We agree with Appellants. In particular, we find that while Boerner's disclosure of analyzing a plurality of time series data sets to determine a plurality of datasets (§ [0034]) can be construed as using a data stream to generate a plurality of sequences, we find no evidence on the record before

us that those generated sequences are used to determine the value of the threshold. Rather, Boerner discloses using the analyzed time series data sets (data stream) as opposed to the determined data sets (sequences) to generate the trend (§ [0044]) or to identify a threshold therein (§ [0018, 0070-77]).

We therefore agree with Appellants that proffered interpretation of the prior art of record is unreasonable, and does not describe the disputed limitations.

Because Appellants have shown at least one error in the Examiner's rejection of claim 1 we need not address Appellants' other arguments. It follows that Appellants have shown the Examiner erred in finding that Boerner anticipates claim 1.

Because claims 2-12, 14-23, and 25-30 also recite limitations that are commensurate in scope with the disputed limitations of claim 1 discussed above, we find that Appellants have also shown error in the Examiner's rejection of those claims.

Obviousness Rejection

Because claims 13 and 24 also recite limitations that are commensurate in scope with the disputed limitations of claim 1 discussed above, and Cox does not cure the noted deficiencies, we find that Appellants have also shown error in the Examiner conclusion that the Boerner and Cox renders independent claims 13 and 24 unpatentable.

Appeal 2010-001456
Application 10/698,736

III. DECISION

We reverse the Examiner's rejections of claims 1-30 as set forth above.

REVERSED

Vsh